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ADVISORY

Preparing for a Third-Party Sale of a Family Business: Key Business Considerations for Owners

The Great Wealth Transfer: Strategies for Succession, Legacy and Wealth Generation

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As part of the "Great Wealth Transfer," privately owned businesses with an aggregate value estimated at $10 trillion or more are expected to change hands. Many of these businesses will be sold to a third-party buyer. Early, thoughtful preparation can meaningfully increase value, reduce execution risk, and preserve legacy as owners navigate a competitive market and personal objectives. The process is significant and nuanced. Sellers will benefit from intentional planning, including assembling an experienced team, protecting confidentiality, presenting clean financials, remediating business red flags, and electing a sale process aligned to a seller's goals, personal objectives, and market conditions. As with any succession pathway in this series, the emphasis is on clarity of goals, tailored strategy and disciplined execution.

This is the second advisory in a series examining the impact of the "Great Wealth Transfer" on business and succession planning for family business owners, including strategies for business succession planning, lessons learned from the "private equity playbook" designed to maximize the business's exit valuation and how wealth transfer and other estate planning techniques can further optimize the business strategies set forth in this series. For more, subscribe to our series and receive our extensive guide, *The Great Wealth Transfer: Strategies for Succession, Legacy and Wealth Generation*, coming later this year. The guide will expand on the topics covered in the series and provide additional context, explanations and cost-benefit analyses for each topic.

Assemble an Experienced Advisory Team Early

Bringing on seasoned legal counsel, investment bankers and financial advisors at the outset "pays for itself," enabling owners to proactively solve business issues, anticipate pitfalls and expedite due diligence and other negotiations. Experienced advisors offer market perspective, help negotiate favorable terms (specifically including at the letter of intent or term sheet stage), and coordinate legal, financial, tax and operational workstreams so nothing falls through the cracks. They also leverage relationships to introduce sellers to qualified buyers and lenders and bring current readouts on valuation and terms. While lower-fee quotes may seem attractive, insufficient experience can increase total cost, reduce value through delays, missteps, or missed negotiating leverage, and potentially derail a transaction.

Manage Confidentiality Inside and Outside the Business

Maintaining both internal and external confidentiality is essential to avoid employee uncertainty, preserve customer and supplier trust and prevent disruption. Internally, identify a small circle of trusted senior leaders to drive diligence while keeping the process tight; inform the broader team only as a deal becomes more certain, and prepare a communications plan for when and how to notify employees, key suppliers and major customers. With respect to external confidentiality, require signed, robust confidentiality agreements before sharing any proprietary information with potential buyers, release sensitive details in stages (e.g., trade secrets, IP, key personnel data, and granular financials only after protections are in place and a deal is more certain), and consider clean teams or virtual data rooms to control access and monitor activity. Do not permit buyer meetings with employees, customers, or suppliers to take place early or without a company representative present. Coordinate carefully around any third-party consents, such as from key suppliers, customers or landlords, balancing the need for confidentiality against the practical requirements to close.

Prepare Financials to Withstand Buyer Scrutiny

Clear, complete and correct financial statements that comply with Generally Accepted Accounting Principles accelerate diligence and improve buyer perception of the business's value. In collaboration with financial and tax advisors, address common issues in advance: resolve overdue liabilities and document settlements; review accounts receivable, write off uncollectible amounts, and substantiate aging and collection assumptions; inventory slow-moving/obsolete items; ensure all tax filings (income, payroll, sales/use, franchise) are current; and analyze your business's earnings before interest, taxes, depreciation and amortization (EBITDA) and understand the adjustments a sophisticated buyer will make to your business's EBITDA calculation. Consider commissioning a sell-side quality-of-earnings review to surface issues before a buyer's analysis. This proactive approach resolves issues before they arise, builds credibility, speeds diligence, and reduces retrade risk and unexpected escrows or price adjustments.

Diagnose and Remediate Functional "Red Flags"

Consider conducting a cross-functional "mock audit" of the business to help surface and resolve common business diligence issues well before engaging buyers. Completing (or commencing) these fixes prior to buyer outreach shows a buyer that you are serious and will reduce closing risk, purchase price reductions or changes to the indemnity package. The following are a few common issues to review. With respect to human resources, review and remediate employee/independent contractor classifications, resolve disputes, and implement retention and incentive plans to hold key talent through closing. In intellectual property, ensure executed intellectual property assignments from employees and contractors, register core trademarks or patents as appropriate, and document open-source usage and licenses. With respect to legal disputes, mitigate or resolve threatened litigation, pursue and execute settlement agreements with broad releases where feasible and align insurance coverage. In commercial relationships, ensure key supplier and customer agreements are documented (and signed), provide for long-term certainty, and address seller-favorable change-of-control or termination provisions.

Choose a Sale Process That Fits Goals, Confidentiality and Market Timing

There are two primary paths to find your buyer: targeted outreach or a structured auction. Targeted outreach typically involves reaching out to one or several strategically aligned parties that are known to the seller. This approach favors speed and confidentiality, but requires that natural acquirers are already known and may sacrifice competitive tension and broadened market discovery. The seller can also carry a higher closing risk if the chosen party stalls or retrades the deal. Auctions, led by an investment banker, create competition that can maximize price and improve terms, with broader reach to strategics and sponsors and a structured timeline, but require more time, fees, and tolerance for market exposure. In either approach, sophisticated advisors should assist in buyer outreach, managing communication, negotiating confidentiality agreements, and designing and executing a sale timeline. Ultimately, the business owner's bespoke objectives, the nature and complexity of the business, market conditions, timing, and confidentiality needs should be taken into account in determining the optimal strategy.

Putting it All Together: Plan Early, Prepare Deliberately, and Stay aligned to objectives

Selling a family business is both a financial and personal milestone. As emphasized throughout this series, early planning clarifies objectives, engages stakeholders, and avoids rushed decisions while preserving legacy. A trusted legal advisor can coordinate strategy across succession and sale pathways and help ensure that the family business owner's goals are protected and achieved.

Katten is here to help you plan in the near term and execute for the long term when it comes to navigating important commercial and legal considerations for your family business, including wealth transfer and business succession. [Click here] to subscribe and receive the rest of our series and our extensive guide, The Great Wealth Transfer: Strategies for Succession, Legacy and Wealth Generation, coming later this year. This article was written by Michael L. Sherlock, a corporate and family office lawyer in Katten's Chicago office. Julia Brook and Emily Kay Watson, M&A and private *equity lawyers in Katten's Chicago office, also contributed to this article. Please reach out to the authors or your existing Katten team with any questions.*

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